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EXAMINER

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Notification of Non-Compliant Appeal Brief
(37 CFR 41.37)**

Application No.

08/756,018

Applicant(s)

SEED ET AL.

Examiner

G. R. Ewoldt, Ph.D.

Art Unit

1644

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 22 January 2004 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.

EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

The Brief cites two references, Hortin et al., and Huttner, that are not of record. While cited in the arguments of 9/20/01, the references have not been entered into the record. See the IDS of 9/8/97 and the References Cited by the Examiner of 4/15/98 and 12/29/98. Accordingly, citation of, and reliance upon, said references in the instant Brief renders it defective.

Additionally, the Appellant states that Claims 24 and 25 do not stand or fall with Claims 10 and 12-14 or each other. Appellant indicates that "The claims do not stand or fall together because they are different in scope and are drawn to different genera of synthetic P-selectin ligands having different descriptions. On both issues presented above, however, the grouping of claims is the same". Appellant's first sentence provides insufficient explanation as to why or how the specification provides enablement or written description for any of the three "genera" separately, see 37 CFR 1.192, "Merely pointing out differences in what the claims cover is not an argument as to why the claims are separately patentable". Regardless, Appellant's second sentence indicates that the the claims do indeed stand or fall together. Accordingly, the instant Brief is again defective.


G.R. EWOLDT, PH.D.
PRIMARY EXAMINER

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